



California Regional Water Quality Control Board

Central Valley Region



Ed J. Schnabel
Chair

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CERTIFIED MAIL
NO. P 945 302 287

5 August 1998

Ms. Kathleen Winter
Dickenson, Peatman and Fogarty
809 Coombs Street
Napa, CA 94559-2977

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT - PUTAH CREEK RESORT, NAPA COUNTY

This is in response to your letter dated 4 August 1998 regarding an offer on behalf of your client, Mr. Nick Petsas, to resolve Administrative Civil Liability (ACL) Complaint No. 98-505 issued 13 July 1998 to the subject resort.

You propose:

- 1 The Resort will pay a cash penalty of \$10,500 for the Civil Liability imposed, comprising the total and complete penalty to be assessed by either the State Water Resources Control Board (State Board) or Central Valley Regional Water Quality Control Board (Regional Board) with regard to the alleged violations of the ACL.
2. The Resort will pay the \$10,500 penalty in two equal installments of \$5,250 each. The first payment will be due to the Regional Board no later than 4 September 1998. The second payment in the same amount will be due to the Regional Board by 4 October 1998.
3. The Resort will waive its right to a hearing before the Regional Board.

We intend to accept your proposal unless adverse comments are received by 4 September 1998 (30-day comment period).

Please sign and date the attached Waiver and Payment of Liability to acknowledge my acceptance of your settlement offer under the terms specified and return it to this office no later than Friday, 7 August 1998. Please note that the State Board does not have authority to issue

California Environmental Protection Agency

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administrative civil liability, and therefore, the portion of your proposal that references the State Board has been deleted.

If you have any questions, please contact either G. Arnold Inouye at (916) 255-3048 or William Croyle at (916) 255-3059 of my staff.



GARY M. CARLTON
Executive Officer

cc: Regional Board Members
Mr. Nick Petsas, Putah Creek Resort, Napa
Mr. Vern Smith, Putah Creek Resort, Napa
Mr. Eric Natti, U.S. Bureau of Reclamation, Napa
Ms. Frances McChesney, Counsel, State Water Resources Control Board
Department of Fish and Game, Region 2, Rancho Cordova
Mr. Daryl Roberts, Bureau of Investigation, Napa County District Attorney's Office, Napa
Mr. Ruben Oropeza, Napa County Environmental Health Department, Napa
Mr. Peter Krasnoff, WEST, San Rafael

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. 98-505

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF
LAKE BERRYESSA ENTERPRISES, INC. II
PUTAH CREEK RESORT
NICK PETSAS
NAPA COUNTY

This complaint is issued to Putah Creek Resort based on a finding of violations of Waste Discharge Requirements Order No. 90-189 and for failure to submit reports required pursuant to Section 13267 of the California Water Code. Sections 13268 and 13385 of the California Water Code authorize the imposition of Administrative Civil Liability.

The Executive Officer finds, with respect to Putah Creek Resort's and Mr. Nick Petsas' act, or failure to act, the following:

- 1 Lake Berryessa Enterprises, Inc. II, dba Putah Creek Resort and Nick Petsas, (hereafter Discharger) owns and operates a concessionaire resort on Lake Berryessa in Napa County. The resort has approximately 150 mobile homes, a 26 unit motel, 100 camp sites, a store, a restaurant, a boat launch and dock facilities. The resort operates their own water supply and wastewater collection, treatment, and disposal systems. The oxidation ponds are in an area near the East 1/4 corner of Section 16, T9N, R4W, MDB&M.
2. The Resort discharges domestic wastewater from septic tanks to three oxidation ponds and a sprayfield. The sprayfield is to be operated with a recapture pond, and only during dry weather periods. Wastewater is to be discharged to land only.
3. Surface water drainage is to Lake Berryessa. The beneficial uses of Lake Berryessa are municipal, industrial, and agricultural supply; recreation; aesthetic enjoyment; ground water recharge; fresh water replenishment; hydropower generation; and preservation and enhancement of fish, wildlife, and other aquatic resources.
4. On 22 June 1990, the Regional Water Quality Control Board (Board) adopted Order No. 90-189, prescribing waste discharge requirements for the Putah Creek Resort. Sometime during the mid 1990s, the Resort was purchased by Lake Berryessa Enterprises, Inc. II, dba Putah Creek Resort, Mr. Nick Petsas. On 24 March 1998, Mr. Nick Petsas filed a Report of Waste Discharge to change the name of the facility operator. The Resort is now called the Putah Creek Resort. Order No. 98-129 was adopted by the Board on 5 June 1998 to reflect the current facility name and ownership.

5. WDRs Order No. 90-189 states, in part:

A. Discharge Prohibitions

The direct discharge of wastes to surface waters or surface water drainage courses is prohibited.

The bypass or overflow of untreated or partially treated waste is prohibited.

B. Discharge Specifications

1. Neither the treatment nor the discharge shall cause a nuisance or condition of pollution as defined by the California Water Code, Section 13050.
3. The discharge shall remain within the designated disposal area at all times.
6. A .0 foot freeboard shall be maintained in all ponds at all times.
8. There shall be no spray irrigation of effluent outside the confines of the ponds for a period of 24 hours before or 48 hours after any rainfall.

C. Provisions

1. The Discharger may be required to submit technical reports as directed by the Executive Officer.
2. The Discharger shall comply with the attached Monitoring and Reporting Program No. 90-189.
3. The Discharger shall comply with the Standard Provisions and Reporting, dated 1 February 1990, which are a part of this Order.
4. The Discharger shall report promptly to the Board any material change or proposed change in the character, location, or volume of the discharge.

6. Standard Provisions and Reporting Requirements for Waste Discharge to Land, dated 1 February 1990, state, in part:

A. General Provisions

12. The discharge shall remain within the designated disposal area at all times.

B. General Reporting Requirements

In the event the Discharger does not comply or will be unable to comply with any prohibition or limitation of this Order for any reason, the discharger shall notify the Board by telephone at (916) ~~361-5600~~ [255-3000] as soon as it or its agents have

knowledge of such noncompliance or potential for noncompliance, and shall confirm this notification in writing within two weeks. The written notification shall state the nature, time and cause of noncompliance, and shall describe the measures being taken to prevent recurrences and shall include a timetable for corrective actions.

On 21 January 1998, the Napa County Department of Environmental Management (County) conducted an annual inspection of the Resort. Sewage pond No. 2 was overflowing to Lake Berryessa. The Discharger did not report the spill to the Board.

8. On 23 January 1998, an inspection by staff revealed that pond No. 2 had overflowed for an unknown number of days. The Discharger was using the sprayfield during wet weather. Tailwater from the sprayfield was entering an unnamed tributary stream which enters Lake Berryessa.
9. On 20 February 1998, the U.S. Bureau of Reclamation (USBR) filed a complaint with the County that the Resort was siphoning from their pond to Lake Berryessa for an unknown number of days. The Discharger did not report their actions to the Board.
10. On 27 April 1998, the County received a complaint regarding a sewage spill from a manhole on 25 and 26 April 1998 which entered Lake Berryessa. The Discharger did not report spill to the Regional Board. The spill was confirmed by USBR.
11. On 27 May 1998, an inspection by staff confirmed the unauthorized discharge of approximately 160,000 gallons of wastewater (USBR estimate) to two ponds not part of the existing facility in violation of Discharge Specification B.3. of Order No. 90-189. These ponds allow wastewater to percolate into groundwater. The ponds are not fenced. This inspection also found inadequate freeboard in all ponds in violation of Discharge Specification B.6. of Order No. 90-189.
12. On 11 June 1998, the USBR reported a spill from a manhole to Lake Berryessa on 8 June 1998 to the County and the Board. The amount and duration of spill is unknown. Discharger did not report the spill to the Board.
13. The discharges to surface waters violated Discharge Prohibition A.1., Discharge Specification B.3., and Standard Provisions A.12. of Order No. 90-189. In addition, the discharge on 23 January 1998 violated Discharge Specification B.8. of Order No. 90-189.
14. The Discharger has failed to perform required monitoring and submit monthly reports to the Board for the period March 1995 through 1 June 1998, in violation of Provisions C.2.

of Order No. 90-189. This is a total of 1174 days. The Discharger is still not in compliance with the Monitoring and Reporting Program.

15. On 18 March 1998, the Executive Officer issued a Notice of Violation (NOV) for continued violation of WDRs Order No. 90-189. The NOV requested a technical report pursuant to Section 13267 of the California Water Code. The report was due on 3 April 1998. On 7 April 1998, staff approved a deadline time extension to 17 April 1998 as requested by the Discharger. After many discussions with the Discharger, on 23 April 1998, staff transmitted a letter stating that if the technical report was not received by 27 April 1998, staff would propose additional enforcement action. As of 8 July 1998, the Discharger has not submitted a technical report as requested by the NOV dated 18 March 1998. This is a total of 96 days.
16. Section 13267(b) of the California Water Code states, in part:

[T]he regional board may require that any person who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste within its region ... shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.
17. Section 13268 of the California Water Code states, in part:
 - (a) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267...may be liable civilly in accordance with subdivision (b).
 - (b)(1) Civil liability may be administratively imposed by a regional board...for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
18. Section 13385 of the California Water Code states, in part:
 - (a) Any person who violates any of the following shall be liable civilly in accordance with subdivisions (b), (c), (d), (e), and (f):
 - (1) Section 13375 or 13376.
 - (4) Any order or prohibition issued pursuant to Section 13243 ... if the activity subject to the order or prohibition is subject to regulation under this chapter.

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- (c) Civil liability may be imposed administratively by the State Board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both the following:
 - (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
 - (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. "
- 19. The discharge of wastewater to surface waters and surface water drainage courses in violation of Order No. 90-189 occurred on 21 and 23 January 1998, 20 February 1998, 25 and 26 April 1998, and 8 June 1998. These violations were documented by the County, USBR and/or Regional Board staff. The Discharger failed to notify the Regional Board as to the discharge of wastewater outside the collection, treatment, and disposal system and/or into surface water drainage courses and/or surface waters. Knowledge of these violations was obtained from complaints, and from facility inspections conducted by the County, USBR and Regional Board. The Discharger discharged waste to surface waters or surface water drainage courses in violation of Discharge Prohibition A.1. of Order No. 90-189 and Water Code Sections 13243 and 13376. The maximum administrative civil liability which may be imposed by the Regional Board under Water Code Section 13385 for the violations is sixty thousand dollars (\$60,000).

The total volume of wastewater discharged to Lake Berryessa during the period discussed in this complaint was not measured, therefore, a penalty of ten dollars (\$10) per gallon cannot be assessed.
- 20. The maximum civil liability which may be imposed by the Regional Board under Water Code Section 13268 for failing to submit the technical report and Monitoring and Reporting Program reports for a total of 1,270 days is one million two hundred and seventy thousand dollars (\$1,270,000).
- 21. The maximum civil liability which may be imposed by the Regional Board for violation described in this complaint is one million three hundred and thirty thousand dollars (\$1,330,000).
- 22. To date, staff costs associated with processing this complaint are approximately four thousand dollars (\$4,000).

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LAKE BERRYESSA ENTERPRISES, INC. II, dba PUTAH CREEK RESORT, AND
NICK PETSAS IS HEREBY GIVEN NOTICE THAT:

- 1 I am proposing that an Administrative Civil Liability be imposed in the amount of twenty thousand dollars (\$20,000). In determining the amount of civil liability, I have taken into consideration the following factors: the nature, circumstance, extent, and gravity of the violation and with respect to the violator, the ability to pay; any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation; and other matters as justice may require [Water Code Section 13385(e)].
2. A hearing on this matter will be scheduled within 60 days unless the Discharger agrees to waive a hearing and pay the proposed civil liability in full.
3. If a hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. In lieu of a hearing, the Discharger may waive the right to a hearing. Any waiver will not be effective until **30 days from the date of this complaint** to allow other interested persons to comment on this action. If you wish to waive the hearing, please check and sign the waiver and return it, and the amount of civil liability, to the Board's office within 15 days of this Complaint.


GARY M. CARLTON, Executive Officer

13 July 98